



## Appeal Decision

Site visit made on 2 March 2022

**by John Whalley**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 March 2022**

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### **APP/C3240/C/21/3281807; 3281808 Hoo Farm, Humber Lane, Donnington TF6 6DJ**

- The appeals are made by Mr Edward Vivian Dorrell (our ref; APP/C3240/C/21/3281807) and Mrs Carolyn Jean Dorrell (our ref; APP/C3240/C/21/3281808) under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Telford and Wrekin Council.
- The notice was issued on 28 July 2021 under reference No. ENF/2020/0060.
- The breach of planning control was: Without planning permission, the material change of use of the land to a landscape contractors storage yard, the siting of storage containers and the laying of stone and hardcore.
- The requirements of the notice are:
  1. Cease the use of the land as a landscape contractors storage yard.
  2. Remove all vehicles, plant, machinery, steel storage containers, materials and any other paraphernalia associated with the landscape contractors business from the land.
  3. Remove all stone and hardcore laid to create hardstanding areas and track within the site, and return the land to its previous condition.
- The period for compliance with the requirements is three months.
- The appeals by Mr and Mrs Dorrell were made on grounds (a), (b), (f) and (g). As the appeals were brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act. Mr Edward Vivian Dorrell paid the requisite fee for the deemed application to be considered. His appeal would therefore continue under grounds (a), (b), (f) and (g). The appeal made by Mrs Carolyn Jean Dorrell would continue on grounds (b), (f) and (g).

**Summary of decision: The enforcement notice is quashed. The deemed planning application has not been considered.**

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### **Appeal site**

1. The appeal site is an approximately square shaped area of just over 0.5ha of land some 80m south of Humber Lane, Donnington, Telford. The Council said it is an area of land within the Hoo Farm estate to the west of the main commercial buildings at Hoo Zoo, (formerly Hoo Farm Animal Kingdom). Hoo Farm was described as a family run countryside tourist attraction in 32 acres of woodland and paddocks in the heart of rural Shropshire.
2. The appeal site is accessed from Humber Lane along the Hoo Zoo private roadway. It also provides access to land immediately to the north of the appeal land. The access road from Humber Lane to the appeal site is not shown on the plan attached to the enforcement notice.

## Planning unit

3. The Courts use the concept of the planning unit to determine the area of land to be considered when identifying the primary use of land, (and its ancillary uses), and whether any material change of use has occurred. In the case of *William Newland v SSCLG and Waverley BC QBD 22 December 2008*, HHJ Hickinbottom said the identification of the relevant planning unit was quintessentially a matter of fact and degree for the primary decision maker.
4. In the case of *Burdle v SSE [1972] 1 WLR 1207*, Bridge J. said: "*It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.*".
5. Mr and Mrs Dorrell said they had used the appeal site land for many years to store farm machinery and materials such as fencing posts, gates, etc. That would appear to have been an ancillary storage use associated with their large holding at Hoo Farm. A local landscape contractor, Simon Tranter Ltd, had been allowed to store his landscaping tractors, vehicles and vans on the land. Simon Tranter Ltd therefore became the occupier of the appeal land. In that event, their use of the appeal site for the purposes of a landscape contractor was no longer associated with the Hoo Farm attraction. When the Council took this enforcement action against the use of the appeal site as a landscape contractor's store, the access to the site from Humber Lane was omitted from the notice plan. The use of that section of the Hoo Zoo access roadway that also forms the appeal site access would have changed from use ancillary to the Hoo Zoo use to a mixed use for the Hoo Zoo attraction and for use of the land as a landscape contractors storage yard. The Appellants' plan submitted as part of their ground (b) appeal better shows the area used by Simon Tranter, albeit showing a smaller area of occupation. However, I consider that I cannot add this section of roadway to the area of land enforced against, altering the planning unit.
6. Whilst there is a duty on me to get the notice in order if I can, (*Hammersmith and Fulham LBC v SSE & Sandral [1975] 30 P&CR 19*), the power to correct the notice cannot be used to change the planning unit, if that could involve different arguments from those made as to the materiality or merits of a change of use, (*TLG Building Materials v SSE & Arthur & Carrick DC [1981] JPL 513*). The use of the shared access raises concerns on the planning merits of the parties' cases which I cannot address.
7. I consider the failure to correctly define the planning unit fatal to the notice. I therefore quash the enforcement notice. I have not considered any of the grounds of appeal, nor the ground (a) appeal by Mr Dorrell.

## FORMAL DECISION

8. The enforcement notice is quashed. The planning application by Mr Dorrell deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out has not been considered.

*John Whalley*

INSPECTOR